

PT 99-57

Tax Type: Property Tax

Issue: Religious Ownership/Use

**STATE OF ILLINOIS
DEPARTMENT OF REVENUE
OFFICE OF ADMINISTRATIVE HEARINGS
SPRINGFIELD, ILLINOIS**

CALVARY BAPTIST CHURCH)	
)	
Applicant)	A.H. Docket # 98-PT-0075
)	Docket #98-92-51
v.)	98-92-52
)	Parcel Index # 23-20-107-015-0060
THE DEPARTMENT OF REVENUE)	23-20-300-002-0020
OF THE STATE OF ILLINOIS)	

RECOMMENDATION FOR DISPOSITION

Synopsis:

The hearing in this matter was held at the Willard Ice Building, 101 West Jefferson Street, Springfield, Illinois, on March 24, 1999, to determine whether or not Vermilion County Parcel Index Nos. 23-20-107-015-0060 and 23-20-300-002-0020 qualified for exemption from real estate taxation for the 1998 assessment year.

Mr. Donald L. Martin, Chairman of the Board of Trustees of Calvary Baptist Church (hereinafter referred to as the "Church") and Rev. Joseph Humrichous pastor of the church were present and testified on behalf of the church.

The issues in this matter include, first, whether the church is a religious organization; secondly, whether the church owned these parcels during the 1998 assessment year; and lastly,

whether the church used these parcels for primarily religious purposes during the 1998 assessment year.

Following the submission of all of the evidence and a review of the record, it is determined that the church is a religious organization. It is also determined that the church owned these parcels during the period July 23, 1998, through December 31, 1998. Finally, it is determined that these parcels were not used primarily for religious purposes during the period July 23, 1998, through December 31, 1998.

It is therefore recommended that Vermilion County Parcel Index Nos. 23-20-107-015-0060 and 23-20-300-002-0020 remain on the tax rolls for the period they were owned by the church, July 23, 1998, through December 31, 1998.

Findings of Fact:

1. The jurisdiction and position of the Illinois Department of Revenue (hereinafter referred to as the "Department") in this matter, namely that these parcels did not qualify for exemption for the 1998 assessment year was established by the admission in evidence of Department's Exhibit Nos. 1 through 6A.

2. On August 25, 1998, the Vermilion County Board of Review transmitted to the Department Applications for Property Tax Exemption To Board of Review concerning the parcels here in issue for the 1998 assessment year. (Dept. Ex. Nos. 2 & 2P)

3. On October 29, 1998, the Department advised the church that it was denying the exemption of these parcels because said parcels were not in exempt use. (Dept. Ex. Nos. 3 & 3A)

4. On November 9, 1998, Mr. Don Martin, Chairman of the Board of Trustees of the church requested a formal hearing in this matter. (Dept. Ex. No. 4)

5. The hearing in this matter conducted on March 24, 1999, was held pursuant to that request. (Dept. Ex. No. 5)

6. At the pretrial conference in this matter, the Administrative Law Judge advised Mr. Martin that it would be appropriate for the church to be represented by legal counsel at the hearing. At the hearing Mr. Martin recalled that conversation and advised that the church wished to proceed without counsel. (Tr. p. 15)

7. At the hearing Mr. Martin and Rev. Humrichous were advised of the church's right to seek administrative review within 35 days after the mailing of the Director's decision to the church. (Tr. pp. 28 & 29)

8. During 1998, there were 360 members of the church and the average attendance at Sunday morning worship services was approximately 360 persons. (Tr. p. 14)

9. During 1998, worship services were held at the church sanctuary located on a parcel contiguous to the parcels here in issue on Sunday mornings at 10:30 A.M., Sunday evenings at 6:00 P. M., and also on Wednesday evenings. (Tr. p. 14 & Appl. Ex. No. 10)

10. During 1996, the church entered into a building program on the parcel where the church sanctuary is located which is contiguous to the parcels here in issue. This program includes building a family center consisting of approximately 15,000 square feet. The church is proceeding with this program on a pay as you go basis. At the hearing in this matter it was estimated that this program is from one and one-half to two years from completion. (Tr. pp. 21 & 22)

11. The church acquired the parcels here in issue on July 23, 1998, at a sale as a result of the bankruptcy of the former owner. This property was purchased by the church for future expansion. In light of the current building program on the adjacent parcel it is estimated by the church that it will be five years before expansion concerning the parcels here in issue will begin. (Tr. p. 21, Dept. Ex. No. 2V)

12. Vermilion County Parcel Index No. 23-20-107-015-0600 contains 4.54 acres and is improved with a pond for a motorized boat play area and an 18-hole miniature golf course. There are two buildings on this parcel. The larger building which measures 30 feet by 30 feet, contains two restrooms, a kitchen, and a meeting area. It was stated that the seating capacity of

this building was 30 to 40 persons. The smaller building measures 10 feet by 14 feet and was used to store the equipment used in the motorized boat play area. (Dept. Ex. Nos. 2, 2E, 2J, & 2W)

13. Vermilion County Parcel Index No. 23-20-300-002-0020 contains 1.8 acres and is vacant land. (Dept. Ex. Nos. 2P, & 2W)

14. During the period July 23, 1998, through December 31, 1998 the boats have not been in operation. During that period, only the miniature golf course has been used. (Tr. p. 19)

15. There is a fence around the miniature golf course, the pond, and the large building. The church keeps the gate locked except when the miniature golf course or the building is in use. The miniature golf has not been open to the public, only to church members and constituents. Members and constituents have not been charged to play miniature golf. (Tr. pp. 22 & 25)

16. The use of the 4.54-acre began on September 6, 1998, when the church had a dedication luncheon and fellowship after worship service from Noon to 4:00 P.M. The miniature golf course was open after the dedication. Approximately 200 people were in attendance. (Dept. Ex. No. 2E, Appl. Ex. No.22)

17. The home school group is a group of parents who are teaching their children at home. Some of these parents are members of the church. The home school group had a night out function on September 25, 1998, for three and one-half hours with 50 parents and children in attendance. The miniature golf course was used. On October 16, 1998, the home school group had a mother and children function for two hours with 30 mothers and children present. Again the miniature golf course was used. (Tr. p. 16, Appl. Ex. No. 22)

18. On November 9, 1998, a baby shower was held in the large building for two hours. Fifteen people attended. On December 19, 1998, the College and Career Sunday School Class held its Christmas party in the large building with 25 people attending. (Appl. Ex. No. 22)

19. On the last two Sunday evenings in September and the first two Sunday evenings in October after the evening worship service the miniature golf course was open for play by church members. (Appl. Ex. No. 22)

20. On October 24, 1998, the church youth, with 25 in attendance, held a hotdog roast and scavenger hunt on the 1.8-acre vacant parcel. (Appl. Ex. No. 22)

Conclusions of Law:

Article IX, Section 6, of the Illinois Constitution of 1970, provides in part as follows:

The General Assembly by law may exempt from taxation only the property of the State, units of local government and school districts and property used exclusively for agricultural and horticultural societies, and for school, religious, cemetery and charitable purposes.

This provision is not self-executing but merely authorizes the General Assembly to enact legislation that exempts property within the constitutional limitations imposed. City of Chicago v. Illinois Department of Revenue, 147 Ill. 2d 484 (1992).

Concerning property used for religious purposes, 35 **ILCS** 200/15-40 provides in part as follows:

All property used exclusively for religious purposes, or used exclusively for school and religious purposes, . . . not leased or otherwise used with a view to profit, is exempt,

It is well settled in Illinois that when a statute purports to grant an exemption from taxation, the fundamental rule of construction is that a tax exemption provision is to be construed strictly against the one who asserts the claim of exemption. International College of Surgeons v. Brenza, 8 Ill.2d 141 (1956); Milward v. Paschen, 16 Ill.2d 302 (1959); and Cook County Collector v. National College of Education, 41 Ill.App.3d 633 (1st Dist. 1976). Whenever doubt arises, it is to be resolved against exemption, and in favor of taxation. People ex rel. Goodman v. University of Illinois Foundation, 388 Ill. 363 (1944) and People ex rel. Lloyd v. University of

Illinois, 357 Ill. 369 (1934). Finally, in ascertaining whether or not a property is statutorily tax exempt, the burden of establishing the right to the exemption is on the one who claims the exemption. MacMurray College v. Wright, 38 Ill.2d 272 (1967); Girl Scouts of DuPage County Council, Inc. v. Department of Revenue, 189 Ill.App.3d 858 (2nd Dist. 1989) and Board of Certified Safety Professionals v. Johnson, 112 Ill.2d 542 (1986). It is therefore clear that the burden of proof in this matter is on the church.

Based on the evidence and testimony in this case I conclude that the church is a religious organization. I also conclude that the church owned this parcel during the period July 23, 1998, through December 31, 1998.

A religious purpose pursuant to the constitutional provision concerning exemption from taxation is a use of property by a religious society or organization as a place for worship, Sunday schools, and religious instruction. People ex rel. McCullough v. Deutsche Gemeinde, 249 Ill. 132 (1911). To qualify for exemption, a property must in fact be used for religious purposes. An exemption will be denied if it is not so used. Thus, for example, a church property that is boarded up and vacant will not qualify for exemption. Antioch Missionary Baptist Church v. Rosewell, 119 Ill.App.3d 981 (1st Dist. 1983). The improvements on the parcels here in issue are not conducive to worship, Sunday schools, or religious instruction. In addition the evidence and testimony presented at the hearing indicate that these parcels were not used for worship, Sunday schools or religious instruction during the period July 23, 1998, through December 31, 1998.

In the case of People ex rel. Pearsall v. The Catholic Bishop of Chicago, 311 Ill. 11 (1924), the Illinois Supreme Court held that the mere fact that a property was intended to be used for an exempt purpose was not sufficient to exempt said property. The Court required that the actual primary exempt use must have begun for the property to be exempt. In this case the testimony indicated that these parcels were purchased by the church for future expansion which was estimated to begin in approximately five years.

I therefore conclude that the two Vermilion County parcels here in issue were not primarily used for religious purposes during the period July 23, 1998, through December 31, 1998.

I consequently recommend that Vermilion County Parcel Index Nos. 23-20-107-015-0060 and 23-20-300-002-0020 remain on the tax rolls for the period July 23, 1998, through December 31, 1998, or 44%, which was the portion of the 1998 assessment year that they were owned by the church.

Respectfully Submitted,

George H. Nafziger
Administrative Law Judge
August 30, 1999